

ST 01-0010-PLR 03/26/2001 EXEMPT ORGANIZATIONS

A supplier's sales of gardening supplies and small gift items to exclusively charitable, religious, or educational organizations for sale at such organizations' occasional dinners and similar activities not more than twice in any calendar year are exempt from tax provided that such organizations have active exemption identification numbers issued by the Department. See 86 Ill. Adm. Code 130.2005. (This is a PLR).

March 26, 2001

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letters dated December 26, 2000 and February 14, 2001. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter dated December 26, 2000, you have stated and made inquiry as follows:

The Requested Ruling

COMPANY is requesting a Private Letter Ruling (pursuant to 2 Ill. Adm. Code 1200.1110) stating that COMPANY should not incur ROT liability on Internet orders where COMPANY is only acting as the fulfillment house for the orders, and not the seller of the product.

Statement of Facts

COMPANY is engaged in the solicitation of wholesale sales to schools, clubs and other organizations in connection with fund-raising projects. COMPANY is a for-profit corporation organized under the existing laws of the State of Illinois. Our products applicable to this ruling include gardening supplies and small gift items. These sales will be held twice a year.

COMPANY is selling to associations organized exclusively for charitable and educational purposes within the meaning of Section 503c of the Internal Revenue Code and IDOR Regulation, Section 130.2005aID. These organizations have valid tax exemption identification numbers. Under Section 130.2005(a)3, sales by exclusively charitable, religious or educational organizations are not subject to Retailers' Occupation Tax when it can be said that such selling is noncompetitive with business establishments. These sales fall under this definition, and therefore, the clubs and organizations do not collect Illinois sales tax.

Analysis

Twice a year, the clubs and organizations hold fundraisers selling COMPANY's gardening supplies and small gift items. The individual orders are combined by the club or organization and submitted to COMPANY as one order. The orders are then received in CITY, IL and shipped to the clubs and organizations directly from our warehouse in CITY, IL. The clubs and organizations then distribute the product to the final customer. COMPANY invoices the clubs and organizations and these organizations collect money from the final customer. The clubs and organizations earn approximately 50% profit on the products sold.

Internet orders for these products, by contrast, are placed through COMPANY's website and shipped directly to the end customer from our warehouse in CITY, IL. The customer pays by credit card for the order and designates the school to receive the profit. COMPANY remits the profit (50%) to the clubs and organizations. These Internet orders are solicited by the club or organization's members, not by COMPANY.

Conclusion

We respectfully request the Department issue a Private Letter Ruling stating that COMPANY is only a fulfillment house for these Internet orders, and not the actual seller. The club or organization is considered to be the seller of the product. Therefore, COMPANY is not required to collect Illinois sales tax.

To the best of our knowledge, the Department has not previously ruled on the same or a similar issue for the taxpayer or any predecessor and neither the taxpayer nor any representative has ever previously submitted the same or similar issue to the Department at any time, including such request that may have been withdrawn prior to the issuance of a letter ruling. We are aware of no other supporting or contrary relevant authorities within the meaning of 2 Ill. Admin. Code 1200(b)(5)&(6).

No audit or litigation is currently pending with the Department. No trade secret or other information need be deleted from the publicly disseminated version of the private letter ruling.

In your letter dated February 14, 2001, you have stated as follows:

Per your telephone request on February 14th, I will attempt to provide you the additional information that you need to issue a private ruling.

First, with regard to evidence supporting the sale is from the school. After the customer enters the COMPANY website, they will need to select the club or organization and child's name that is connected to the sale. The child selling the product will have given the customer this information. Only participating clubs and organizations will be listed. The customer will proceed with their order after entering this information.

Second, with regard to the Internet receipt that will be issued to the customer. This Internet receipt will show the club or organization as the seller of the product. It will show the ship from address as COMPANY with the address of our warehouse. The phone number for shipping questions will be COMPANY.

I hope this helps. Please contact me if you need additional information. We are still in the preliminary stages of defining these sales, so I don't have contracts or physical

receipts to give to you as examples. We wanted to make sure we were complying with Illinois sales tax laws before we started with these types of sales.

The Retailers' Occupation Tax Act, 35 ILCS 120/1 *et seq.* (1998 State Bar Edition), imposes a tax upon persons engaged in the business of selling tangible personal property at retail. The Use Tax Act, 35 ILCS 105/1 *et seq.* (1998 State Bar Edition), imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer.

"Sale at retail" is defined as any transfer of the ownership of or title to tangible personal property to a purchaser, for the purpose of use or consumption, and not for the purpose of resale in any form as tangible personal property to the extent not first subject to a use for which it was purchased, for a valuable consideration. See 86 Ill. Adm. Code 130.201.

Organizations that make application to the Department of Revenue and are determined to be exclusively religious, educational, or charitable, receive an exemption identification number (an "E" number). See the enclosed copy of 86 Ill. Adm. Code 130.2007. This number evidences that the Department recognizes the organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes. If an organization does not have an E number, then its purchases are subject to tax. Please be aware that only sales to organizations holding the E number are exempt, not sales to individual members of the organization.

Organizations that have E numbers are also allowed to engage in a very limited amount of retail selling without incurring Retailers' Occupation Tax liability. These limited amounts of selling are described in the enclosed copy of 86 Ill. Adm. Code 130.2005(a)(2) through (a)(4). An exempt organization may engage in sales to members, noncompetitive sales, and certain occasional dinners and similar activities (two fundraisers a year) without incurring Retailers' Occupation Tax liability. However, if organizations engage in ongoing selling activities (such as Little League concession stands or sales of items in a thrift shop run by a church), they must also register with the Department as retailers, file returns and remit tax. For these types of ongoing sales, the organizations would provide their suppliers with Certificates of Resale for the items they purchase to resell and remit Retailers' Occupation Tax on their gross receipts from sales. See 86 Ill. Adm. Code 130.1405, enclosed, which describes the requirements for validly executed Certificates of Resale.

Applying the above provisions, COMPANY's sales of gardening supplies and small gift items to exclusively charitable, religious, or educational organizations for sale at such organizations' occasional dinners and similar activities not more than twice in any calendar year (see Section 130.2005(a)(4)) are exempt from tax, provided that such organizations have active exemption identification numbers issued by the Department. In addition, with regard to Internet orders that are solicited by exclusively charitable, religious, or educational organizations, COMPANY's sales of items to these organizations for sale at such organizations' occasional dinners and similar activities not more than twice in any calendar year are exempt from tax, again, provided that such organizations have active exemption identification numbers issued by the Department. Such organizations' sales of items via the COMPANY website, whereby persons visit the COMPANY website, select the child's name and organization, order items, pay directly by credit card payment, and receive a receipt that shows the organization as the seller, are also exempt from tax, provided that such sales are made through such organizations' occasional dinners and similar activities not more than twice in any calendar year. Such charitable, religious, or educational organizations must provide COMPANY with an E number for such sales to be exempt from tax. If such organizations' sales are made outside of this limited exemption for occasional dinners and similar activities, COMPANY must obtain a Certificate of Resale for the items the organizations are purchasing for resale.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Gina Roccaforte
Associate Counsel

GR:msk
Enc.